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In re Application of

Takashi Ohno

Application No. 10/806,267

Filed: March 23, 2004

Attorney Docket No. KKP-0276

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed September 10, 2008.

The petition is **granted**.

This application was held abandoned April 26, 2008, after an appeal brief was not filed after the filing of the Notice of Appeal on February 25, 2008. A Notice of Abandonment was mailed on August 13, 2008.

A review of the application file history reveals the following:

- on October 24, 2007, a final rejection was mailed allowing a shortened statutory period for reply of three months from its mailing date.
- on January 24, 2007, applicant filed a response to the final rejection.
- an Advisory Action mailed February 6, 2008, explaining that the response filed January 24, 2008, did not place the application in condition for allowance.
- on February 25, 2008, applicant filed a Petition to Withdraw the Finality of the October 24, 2007, final Office action, a Notice of Appeal, a "Pre-Appeal Brief Request for Review", and request for an extension of time within the first month.
- the Petition to Withdraw the Finality of the Office action was dismissed by a decision mailed May 9, 2008.
- a Notice of Abandonment was mailed August 13, 2008, stating that no response was received to the final Office action mailed October 24, 2007.
- the instant petition was filed September 10, 2008, wherein petitioner argues that the imposition of the holding of abandonment was premature in light of the filing of the "Pre-Appeal Brief Request for Review" filed February 25, 2008, to which no decision has yet been made.

Petitioner argues, and it is noted, that the Pre-Appeal Brief Conference Pilot was made effective July 12, 2005, and the situation at hand is governed by the time frames set forth in the *Official Gazette* Notice published July 12, 2005, which states, in pertinent part, that:

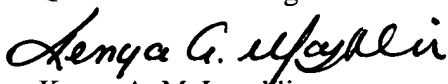
. Time Periods Before/After a Panel Decision:

The request must be filed with the filing of a notice of appeal and before the filing of the appeal brief. No extensions of time are available for filing the request for review. The time period for filing an appeal brief will be reset to be one month from mailing of the decision on the request, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable. To the extent that any existing USPTO rule is inconsistent with this pilot program, the rule is waived until regulations directed to pre-appeal brief conferences are promulgated, or the pilot program is ended. For example, if a request for pre-appeal brief conference is filed with a notice of appeal, the time period set in 37 CFR 41.37(a)(1) is waived so that an appeal will not stand dismissed if an appeal brief is not filed within two months of the filing date of a notice of appeal, but is filed within one month of the decision on the request.

Petitioner timely filed a Notice of Appeal and Request for Pre-Appeal Brief Request for Review both of which are required in order to participate in the pilot program¹. A decision has not yet been rendered on the Pre-Appeal Brief Request for Review. Given the guidance above, the appeal brief is not required to be filed until a decision is made on the Pre-Appeal Brief Request for Review. The holding of abandonment was prematurely imposed and is withdrawn pending the decision on the Pre-Appeal Brief Request for Review.

The application file is being forwarded to Technology 1700, GAU 1796 to await a decision on the Pre-Appeal Brief Request for Review filed February 25, 2008.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

¹ It is noted that the Pre-Appeal Brief Conference Pilot was extended in the *Official Gazette* Notice mailed February 7, 2006.